

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSIAH GALLOWAY,

Plaintiff,

-against-

NASSAU COUNTY; THE INCORPORATED
VILLAGE OF HEMPSTEAD; Police Officer STEVEN
HOROWITZ, Shield No. 144; Detective MATTHEW
ROSS, Shield No. 834; Detective CHARLES DECARO,
Shield No. 1047; Detective RONALD LIPSON, Shield
No. 1296; Detective THOMAS D'LUGINSKI, Shield
No. 7900; Detective GEORGE DARIENZO, Shield No.
1038; Detective KEVIN CUNNINGHAM, Shield No.
112; Detective Sergeant RICHARD DORSI; Detective
RENE B. YAO; Detective CARL STRANGE, Shield
No. 1225; Detective JOSEPH P. SORTINO; JOHN and
JANE DOE 1-20,

Defendants.

**ANSWER TO FOURTH
AMENDED COMPLAINT**

Docket No. 19 CV 5026
(AMD)(ARL)

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Defendants NASSAU COUNTY, DET. MATTHEW ROSS, DET. CHARLES DECARO,
DET. RONALD LIPSON, DET. THOMAS DLUGINSKI, DET. GEORGE DARIENZO, DET SGT.
RICHARD DORSI, DET. RENE YAO and DET. CARL STRANGE (the County Defendants”), by
their attorneys, SOKOLOFF STERN, LLP, as and for their answer to Plaintiff’s Fourth Amended
Complaint (hereinafter “Complaint”) in the above-captioned action, sets forth as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the
allegations contained in ¶ “1” of the complaint..
2. Deny knowledge or information sufficient to form a belief as to the truth of the
allegations contained in ¶ “2” of the complaint.

3. Deny the allegations contained in ¶ “3” of the complaint and refer all questions of law to the Court for adjudication.

4. Deny the allegations contained in ¶ “4” of the complaint and refer all questions of law to the Court for adjudication.

5. Deny the allegations contained in ¶ “5” of the complaint and refer all questions of law to the Court for adjudication.

6. Deny the allegations contained in ¶ “6” of the complaint and refer all questions of law to the Court for adjudication.

7. Deny the allegations contained in ¶ “7” of the complaint and refer all questions of law to the Court for adjudication.

8. Deny the allegations contained in ¶ “8” of the complaint and refer all questions of law to the Court for adjudication.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “9” of the complaint, except admit that at least thirty days have elapsed since service of a notice of claim on Nassau County and adjustment or payment of the claims has been neglected or refused.

10. Deny the allegations contained in ¶ “10” of the complaint and refer all questions of law to the Court for adjudication.

11. This is not an allegation requiring a response.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “12” of the complaint.

13. Deny the allegations contained in ¶ “13” of the complaint and refer all questions of law to the Court for adjudication.

14. Deny the allegations contained in ¶ “14” of the complaint and refer all questions of law to the Court for adjudication.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “15” of the complaint, except admit that Det. Matthew Ross, Det. Charles Decaro, Det. Ronald Lipson, Det. Thomas Dluginski, Det. George Darienzo, Det Sgt. Richard Dorsi, Det. Rene Yao and Det. Carl Strange at all times relevant herein were officers, employees, and agents of the NCPD.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “16” of the complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “17” of the complaint.

18. Deny the allegations contained in ¶ “18” of the complaint and refer all questions of law to the Court for adjudication.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “19” of the complaint.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “20” of the complaint.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “21” of the complaint.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “22” of the complaint.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “23” of the complaint.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “24” of the complaint.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “25” of the complaint.

26. Deny the allegations contained in ¶ “26” of the complaint.

27. Deny the allegations contained in ¶ “27” of the complaint.

28. Admit the allegations contained in ¶ “28” of the complaint.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “29” of the complaint.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “30” of the complaint.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “31” of the complaint.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “32” of the complaint.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “33” of the complaint.

34. Deny the allegations contained in ¶ “34” of the complaint.

35. Deny the allegations contained in ¶ “35” of the complaint.
36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “36” of the complaint.
37. Deny the allegations contained in ¶ “37” of the complaint.
38. Deny the allegations contained in ¶ “38” of the complaint.
39. Deny the allegations contained in ¶ “39” of the complaint.
40. Deny the allegations contained in ¶ “40” of the complaint.
41. Deny the allegations contained in ¶ “41” of the complaint.
42. Deny the allegations contained in ¶ “42” of the complaint.
43. Deny the allegations contained in ¶ “43” of the complaint.
44. Deny the allegations contained in ¶ “44” of the complaint.
45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “45” of the complaint.
46. Deny the allegations contained in ¶ “46” of the complaint.
47. Deny the allegations contained in ¶ “47” of the complaint and refer all questions of law to the Court for adjudication.
48. Deny the allegations contained in ¶ “48” of the complaint.
49. Deny the allegations contained in ¶ “49” of the complaint.
50. Deny the allegations contained in ¶ “50” of the complaint.
51. Deny the allegations contained in ¶ “51” of the complaint.
52. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “52” of the complaint, except admit that the fillers were police officers.

53. Deny the allegations contained in ¶ “53” of the complaint and refer all questions of law to the Court for adjudication.

54. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “54” of the complaint.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “55” of the complaint.

56. Deny the allegations contained in ¶ “56” of the complaint.

57. Deny the allegations contained in ¶ “57” of the complaint.

58. Deny the allegations contained in ¶ “58” of the complaint.

59. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “59” of the complaint.

60. Deny the allegations contained in ¶ “60” of the complaint.

61. Deny the allegations contained in ¶ “61” of the complaint, and refer the Court to Ogletree’s testimony for its full and complete content and import.

62. Deny the allegations contained in ¶ “62” of the complaint.

63. Deny the allegations contained in ¶ “63” of the complaint, and refer to the Court to their testimony for its full and complete content and import.

64. Deny the allegations contained in ¶ “64” of the complaint.

65. Deny the allegations contained in ¶ “65” of the complaint, and refer the Court to the trial transcript for its full and complete content and import.

66. Deny the allegations contained in ¶ “66” of the complaint, and refer the Court to the trial transcript for its full and complete content and import.

- 67. Deny the allegations contained in ¶ “67” of the complaint.
- 68. Admit the allegations contained in ¶ “68” of the complaint.
- 69. Deny the allegations contained in ¶ “69” of the complaint.
- 70. Deny the allegations contained in ¶ “70” of the complaint.
- 71. Deny the allegations contained in ¶ “71” of the complaint.
- 72. Deny the allegations contained in ¶ “72” of the complaint, and refer the Court to Ms.

Anania’s notes for their full and complete contents and import.

- 73. Deny the allegations contained in ¶ “73” of the complaint.
- 74. Admit the allegations contained in ¶ “74” of the complaint.
- 75. Deny the allegations contained in ¶ “75” of the complaint.
- 76. Deny the allegations contained in ¶ “76” of the complaint.
- 77. Deny the allegations contained in ¶ “77” of the complaint.
- 78. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “78” of the complaint.

79. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “79” of the complaint.

80. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “80” of the complaint.

- 81. Deny the allegations contained in ¶ “81” of the complaint.
- 82. Deny the allegations contained in ¶ “82” of the complaint.
- 83. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “83” of the complaint.

84. Deny the allegations contained in ¶ “84” of the complaint, except admit Plaintiff purports to claim those items of damages.

FIRST CLAIM

85. Defendants incorporate the responses to the allegations set forth in ¶¶ “1” through “84” as if set forth fully herein.

86. Deny the allegations contained in ¶ “86” of the complaint.

87. Deny the allegations contained in ¶ “87” of the complaint and refer all questions of law to the Court for adjudication.

88. Deny the allegations contained in ¶ “88” of the complaint.

89. Deny the allegations contained in ¶ “89” of the complaint and refer all questions of law to the Court for adjudication.

90. Deny the allegations contained in ¶ “90” of the complaint.

91. Deny the allegations contained in ¶ “91” of the complaint.

92. Deny the allegations contained in ¶ “92” of the complaint.

SECOND CLAIM

93. Defendants incorporate the responses to the allegations set forth in ¶¶ “1” through “92” as if set forth fully herein.

94. Deny the allegations contained in ¶ “94” of the complaint.

95. Deny the allegations contained in ¶ “95” of the complaint and refer all questions of law to the Court for adjudication.

96. Deny the allegations contained in ¶ “96” of the complaint.

97. Deny the allegations contained in ¶ “97” of the complaint.

98. Deny the allegations contained in ¶ “98” of the complaint.
99. Deny the allegations contained in ¶ “99” of the complaint.
100. Deny the allegations contained in ¶ “100” of the complaint and refer all questions of law to the Court for adjudication.
101. Deny the allegations contained in ¶ “101” of the complaint.

THIRD CLAIM

102. Defendants incorporate the responses to the allegations set forth in ¶¶ “1” through “101” as if set forth fully herein.
103. Deny the allegations contained in ¶ “103” of the complaint.
104. Deny the allegations contained in ¶ “104” of the complaint.
105. Deny the allegations contained in ¶ “105” of the complaint.

FOURTH CLAIM

106. Defendants incorporate the responses to the allegations set forth in ¶¶ “1” through “105” as if set forth fully herein.
107. Deny the allegations contained in ¶ “107” of the complaint and refer all questions of law to the Court for adjudication.
108. Deny the allegations contained in ¶ “108” of the complaint.
109. Deny the allegations contained in ¶ “109” of the complaint.
110. Deny the allegations contained in ¶ “110” of the complaint.
111. Deny the allegations contained in ¶ “111” of the complaint and refer all questions of law to the Court for adjudication.
112. Deny the allegations contained in ¶ “112” of the complaint.

FIFTH CLAIM

113. Defendants incorporate the responses to the allegations set forth in ¶¶ “1” through “112” as if set forth fully herein.

114. Deny the allegations contained in ¶ “114” of the complaint.

115. Deny the allegations contained in ¶ “115” of the complaint.

116. Deny the allegations contained in ¶ “116” of the complaint.

SIXTH CLAIM

117. Defendants incorporate the responses to the allegations set forth in ¶¶ “1” through “116” as if set forth fully herein.

118. Deny the allegations contained in ¶ “118” of the complaint and refer all questions of law to the Court for adjudication.

119. Deny the allegations contained in ¶ “119” of the complaint.

120. Deny the allegations contained in ¶ “120” of the complaint and refer all questions of law to the Court for adjudication.

121. Deny the allegations contained in ¶ “121” of the complaint and refer all questions of law to the Court for adjudication.

122. Deny the allegations contained in ¶ “122” of the complaint.

SEVENTH CLAIM

123. Defendants incorporate the responses to the allegations set forth in ¶¶ “1” through “122” as if set forth fully herein.

124. Deny the allegations contained in ¶ “124” of the complaint and refer all questions of law to the Court for adjudication.

125. Deny the allegations contained in ¶ “125” of the complaint.

EIGHTH CLAIM

126. Defendants incorporate the responses to the allegations set forth in ¶¶ “1” through “125” as if set forth fully herein.

127. Deny the allegations contained in ¶ “127” of the complaint.

128. Deny the allegations contained in ¶ “128” of the complaint.

NINTH CLAIM

129. Defendants incorporate the responses to the allegations set forth in ¶¶ “1” through “128” as if set forth fully herein.

130. Deny the allegations contained in ¶ “130” of the complaint.

131. Deny the allegations contained in ¶ “131” of the complaint and refer all questions of law to the Court for adjudication.

132. Deny the allegations contained in ¶ “132” of the complaint.

133. Deny the allegations contained in ¶ “133” of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

134. The complaint fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

135. The County Defendants have not violated any rights, privileges, or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have they violated any Act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

136. At all times relevant to the acts alleged in the complaint, the individual County Defendants, their agents, and officials acted reasonably, properly, and in the lawful exercise of their discretion and did not violate any clearly established constitutional or statutory right of which a reasonable person would have known, and are therefore entitled to qualified immunity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

137. At all times relevant to the acts alleged in the complaint, the individual County Defendants, their agents, and officials acted reasonably, properly, and in the lawful exercise of their discretion, and are therefore entitled to immunity on all state law claims.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

138. There was probable cause for Plaintiff's arrest, detention, and prosecution.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

139. Plaintiff's claims are barred, in whole or in part, by the statute of limitations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

140. Any harm which allegedly came to Plaintiff was a direct and proximate result of his culpable or negligent conduct, or the culpable or negligent conduct of a third party, and was not the direct or proximate result of the actions or inactions of any of the County Defendants.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

141. Plaintiff failed to mitigate his damages, if there are any.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

142. Plaintiff's 42 U.S.C. § 1983 claim is barred by the intracorporate conspiracy doctrine.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

143. This Court lacks subject matter jurisdiction over this action, in whole or in part.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

144. The County Defendants did not engage in any conduct that would support an award of punitive damages.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

145. Punitive damages cannot be assessed as against defendant Nassau County.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

146. Defendant Nassau County is entitled to governmental immunity from liability under New York common law.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

147. Plaintiff's claims are barred by their failure to comply with the requirements of New York General Municipal Law §§ 59-(e), (h), and/or (I).

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

148. Some or all of the individual County Defendants are entitled to absolute immunity.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

149. Plaintiff's damages have been or will be offset by recovery from a collateral source.

JURY DEMAND

150. Defendant demands a trial by jury.

WHEREFORE, the County Defendants request judgment dismissing the complaint in its entirety, together with costs, and such other and further relief as to this Court is just, proper, and equitable.

Dated: Carle Place, New York
May 17, 2021

SOKOLOFF STERN, LLP
Attorneys for County Defendants

By: _____
BRIAN S. SOKOLOFF (bss-7147)

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TO: All counsel of record via ECF